

REMARKS

Claims 1-6, 16-21, 30-32, 37 and 50-62 are pending in the application. Claims 1-6, 16-21, 30, 31, 37 and 50-62 are allowed. Claim 32 stands rejected.

At the outset, Applicant wishes to express appreciation to Examiner King for determining that the subject application contains patentable subject matter. Applicant addresses the rejection of claim 32 below.

Claim 32 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,261,593 to Yeager ("Yeager"), in view of U.S. Patent No. 5,885,024 to Zupan et al. ("Zupan"). Before addressing the specific assertions presented in the Official Action concerning the Yeager and Zupan references, Applicant respectfully submits that at least the Yeager patent comprises nonanalogous art and therefore cannot be used to form the basis of a rejection of claim 32 under 35 U.S.C. § 103. More specifically, Section 2141.01(a) of the *Manual of Patent Examining Procedure* ("MPEP") provides that "[t]o rely on a reference under 35 U.S.C. 103, it must be analogous prior art". In determining whether a piece of prior art is analogous, the MPEP provides that "the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *Id.*

Applicant's field of endeavor concerns building components used in the construction of residential and/or commercial buildings. Yeager is concerned with planting and fertilizing apparatuses. The Yeager patent is clearly not in Applicant's field of endeavor. Thus, the first test for determining whether a reference is analogous is not satisfied.

With respect to the second prong of the analogous art test, the MPEP provides further instruction concerning what constitutes analogous art in the mechanical arts:

See, for example, *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992) (Applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly "hook" which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied

upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. The court held the reference was not within the field of applicant's endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments).

MPEP § 2141.01(a)(IV).

Applicant respectfully submits that, the present case is directly on point with the court's finding in *Oetiker*. The Yeager patent is directed to solving problems associated with planting and the application of fertilizer. Yeager was not concerned with solving problems associated with connecting building components and a person of ordinary skill in the field of building components **would not look to** the field of planting and fertilizing apparatuses for solutions to problems encountered in the field of building components used to construct buildings. Thus, it is clear that Yeager fails to satisfy the second prong of the analogous art test. Accordingly, the Yeager patent does not comprise analogous art and therefore cannot properly form the basis for rejecting claim 32 under 35 U.S.C. § 103(a). For this reason alone, a *prima facie* case of obviousness has not been established with respect to claim 32.

Even if Yeager was analogous art (although as discussed above, it clearly does not comprise analogous art) and is properly combinable with Zupan, the resulting combination would fall short of the structure recited in claim 32. To understand this shortfall, we first turn our attention to claim 32 which is reproduced below:

32. (Previously presented) A bracket for connecting a pair of building components together, said bracket comprising:
- a) a first connector plate having one or more fastener holes therethrough for non-movably coupling said first connector plate to one of the building components;
 - b) a second connector plate integrally connected to said first connector plate;
 - c) at least one stiffener disposed in a juncture formed between said first and second connector plates;
 - d) at least one substantially linear stiffener channel disposed in said first connector plate; and

e) one or more rows of fastener-receiving holes extending through said second connector plate and being disposed within a stiffener region therein for non-movably fastening said second connector plate to another one of the building components, each of said one or more rows of holes being substantially parallel with any adjacent one of said one or more rows of holes.

We next turn our attention to the Official Action which provides:

Yeager discloses a bracket (25) capable of connecting a pair of building components together, the bracket comprising: a first connector plate (77) having one or more fastener holes (82) therethrough; a second connector plate (79) integrally connected to the first connector plate; a juncture formed between the first and second connector plates; at least one substantially linear stiffener channel (89,90) disposed in the first connector plate; and one or more rows of fastener-receiving holes (81) extending through the second connector plate and being disposed within a stiffener region, each of the one or more rows of holes being substantially parallel with the adjacent one of the one or more rows of holes.

Yeager discloses the claimed invention except for the limitation of at least one stiffener disposed in the juncture...

Applicant respectfully submits that, not only does Yeager fail to disclose at least one stiffener disposed in the juncture, it also fails to disclose other structures in the form recited in claim 32.

The Official Action equates the “vertical disposed portion 79” of the Yeager planting and fertilizing apparatus with the second connector plate recited in claim 32. The Official Action further equates the holes (81) in portion 79 of the Yeager planter with the holes in the second connector plate recited in claim 32. However, claim 32 provides that “one or more rows of fastener-receiving holes extending through said second connector plate **and being disposed within a stiffener region therein...**”(emphasis added). As can clearly be seen in Figure 9 of Yeager, the holes (81) are not disposed within any stiffener region. The portion 79 of the Yeager planting and fertilizing device appears to comprise a flat plate member. Furthermore, Zupan fails to disclose such a feature. Accordingly, even if one were to combine Yeager and Zupan, which Applicant submits that there is no teaching to do so, the resulting combination would at least lack the feature of having one or more rows of holes disposed within a stiffener region in

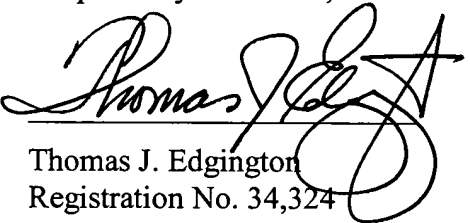
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the second connector plate. Thus, in addition to the fact that Yeager fails to comprise analogous art and therefore cannot form the basis of a rejection of claim 32 under 35 U.S.C. § 103(a), even if Yeager could be combined with Zupan, the combination would still not properly form the basis for a *prima facie* obviousness rejection of that claim. As such, Applicant respectfully submits that claim 32 is allowable over this asserted art.

Applicant is also herewith submitting a Supplemental Information Disclosure Statement and check for \$180.00. The PTO is hereby authorized to charge Deposit Account No. 11-1110 for any fee deficiencies associated with that Supplemental Information Disclosure Statement and/or this Response.

Applicant respectfully submits that all of the pending claims are in condition for allowance. Accordingly, reconsideration of the rejection of claim 32 and passage to allowance of all of the pending claims are earnestly solicited.

Respectfully submitted,



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